

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 2058 of 1997

with

CRIMINAL MISC.APPLICATION No 1055 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE R.P.DHOLAKIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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KISHOREBHAI BHIMJIBHAI JADAV

Versus

STATE OF GUJARAT

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Appearance:

1. Criminal Misc.Application No. 2058 of 1997

MR AR THACKER FOR petitioners

MR KP RAVAL, APP for Respondent No.1

MR KANUBHAI I PATEL for Respondent No. 2

2. Criminal Misc.ApplicationNo 1055 of 1998

MR AR THAKKER for petitioners

MR KP RAVAL, APP for Respondent No.1

MR KANUBHAI I PATEL for Respondent No. 2

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CORAM : MR.JUSTICE R.P.DHOLAKIA

Date of decision: 22/03/99

## C.A.V. JUDGEMENT

This petition is filed by the petitioners for quashing the proceedings of Criminal Case No.1291 of 1995 pending in the Court of Judicial Magistrate, First Class, Mirzapur(Ahmedabad) filed by the complainant, Shri V.B.Pandya against the petitioners under sec.379 of Indian Penal Code.

2. The case of the petitioners in short is that one Shri M.V.Pandya residing at house No.66 and Shri A.D.Chaudhary residing at house No.90 made encroachment on the Society's road by putting iron gates. Therefore, Society passed a resolution on 18-2-1995 to remove the said encroachment as the same created obstruction to the Society. Thereafter, notice was also issued, but they have not done so. Therefore, Society has removed the said obstruction in presence of Shri V.B.Pandya, father of Shri M.V.Pandya and also Mr.Chaudhary's family members and iron gates were stored in the Society's room by its employees. Therefore, Shri V.B.Pandya, father of Shri M.V.Pandya filed a complaint against the present petitioners under sec.379 of IPC before Ghatlodia Police Station on 30-2-1995 alleging that the the petitioners have removed the iron gates and taken away. The charge-sheet has been submitted and charge was also framed by the Court against the petitioners. Against that, present petitioners have filed the present petition on the ground that no offence was committed by the petitioners as alleged in the complaint by the complainant and also on the ground that if the complaint is accepted as it is and where it is, then also, ingredient of sec.379 of IPC is not there in the complaint. Therefore, the present petitioners pray for quashing of the proceedings.

3. I have heard learned counsel for the petitioners, Shri P.M.Thakker for Shri A.R.Thakker, on behalf of the respondent No.1-State Mr.K.P.Raval, learned APP and on behalf of the respondent No.2, learned counsel Mr.K.R.Patel. I have also perused the complaint and affidavit filed by the respective parties. It is established from the complaint and also arguments of learned counsel for the parties that the petitioners Nos.1 and 2 are the office bearers of the Society and petitioners Nos.3 and 4 are its employees. It is also established that son of the complainant and Shri A.D.Chaudhary are the members of the Society and superstructure of MIG 66 and MIG 90 respectively were allotted to them and both are occupying the same with their families. The complainant is a retired Police

Officer and Shri Chaudhary is serving as a Police Officer in Ahmedabad City. The complainant is also staying there with his son in MIG 66. It is further established from the complaint that house of these two persons are situated at the end of the Society and beyond their house, there is an open land belonging to the Society known as common plot wherein drainage well and other drainage system of the Society are placed and thereafter there is also a compound wall joining the Society of the petitioners with the neighbouring Society. In between the house Nos.66 and 90, there is a road of the Society which is the only road which leads towards the common plot of the Society and on that road, complainant and Mr.Chaudhary have caused obstruction by encroaching the above land and utilising the same as if it was exclusively allotted to them. Because of this obstruction, members of the Society could not enter in the common plot even for the purpose of providing amenities. In short, they have blocked entry to the common plot of the Society. Therefore, the Society, after passing the resolution, informed the complainant and Shri Chaudhary to remove the same and to facilitate members of the Society to enter into the common plot for the purpose of amenities of members of the Society including the complainant and Shri Chaudhary. But they have not removed the same. Therefore, in their presence, it was taken away and stored in the room of the Society. Therefore ingredients of Sec.379 of IPC is not established. At the most, it can be said to be a civil dispute and nobody can be allowed to settle civil dispute into criminal complaint. It seems that for their ulterior motive, being Police Officers, they have filed the complaint in order to pressurise the office bearers and other members of the Society for their own interest. If at all any dispute is there, then, at the most it is of civil nature, but the ingredient, of theft is not disclosed in the complaint. Moreover, the above materials were stored in the premises of the Society, therefore, question of theft does not arise.

4. Learned counsel for the petitioner has relied upon a case reported in 1978 Cri. Law Journal page 715(Bombay High Court, at Nagpur). The facts in the above reported case are that a complaint was filed against a Chief Officer of Municipal Corporation and a Sub-overseer that they demolished and removed structure belonging to the complainant and thus committed offences under Secs.380, 425 and 441 of IPC. The complaint, in that report case, however, revealed that the structure was unauthorised and the accused have acted lawfully in exercise of their powers and duties. In para 12 of the

above reported judgment, it was held as under:

"There is much substance in the contention of Mr.Deshpande that the present proceeding is not bona fide and it appears to be mischievous and frivolous particularly when both the accused have acted lawfully in exercise of their powers and duties. The necessary result is that the continuation of such a complaint would tantamount to abuse of process of law and it would be in the fitness of things to put an end to that abuse."

4.1 Learned counsel for the petitioner has drawn my attention towards another judgment reported in 1998 SCC (Cri) 1400. The Apex Court in the above reported case at head note held as under:

"A.Constitution of India-Arts.226 and 227-Criminal Procedure Code-1973-S.482-Quashing of criminal proceedings-Scope of High Court's power to quash criminal proceedings in exercise of power under Arts.226 and 227 or S.482 Cr.P.C.-Nomenclature under which petition filed not relevant-Petition under Art.226 can be treated as one under Art.227 or S.482 Cr.P.C.-Power of the Court to discharge the accused at the stage of framing of charge or existence of remedy of appeal and revision not a bar to invoke the jurisdiction of the High Court under Art.227 or 482 Cr.P.C."

4.2 Relying upon the above reported judgments of the Apex Court and also of the Bombay High Court (at Nagpur), the learned counsel for the petitioners has contended that the petitioners being office bearers or employees, have acted in bona fide exercise of their powers. Therefore, the it cannot be said that they have committed any offence as alleged in the complaint.

5. Learned counsel for the respondent No.2, on the other hand, has mainly relied upon a judgment reported in 1999 SCC (Cri) 77. He has drawn my attention towards an unreported judgment of this Court in Misc.Cri.Appln.No.1834 of 1982 decided on 27-4-1983. He has also drawn my attention towards another judgment reported in 1995(6) SCC page 194 in the case of Rupan Deol Bajaj (Mrs.) and another Vs. Kanwar Pal Singh Gill and another more particularly at head note 'I'. Relying upon the above judgments, he has argued that looking to the facts and circumstances of the case, this petition is required to be rejected. Learned counsel for the

respondent No.2 has also taken me through various statements including the panchnama and other documentary evidences and argued that when charge-sheet has been filed in the Court and case is fixed for hearing, this Court should not exercise its discretionary powers under sec.482 of Cr.P.C.

6. In view of the aforesaid discussion, I am of the opinion that when the petitioners, being office bearers and employees of the Society, have acted in bona fide exercise of their powers and also in good faith, and also when ingredients of theft has not been established from the complaint itself, the present complaint is not bona fide one and appears to be mischievous and frivolous one and, therefore, this type of complaint would result in abuse of process of law and it is required to be stopped though at a little bit later stage.

7. Under the circumstances, this Misc. Cri. Application is allowed. The proceedings in Criminal Case No.1291 of 1995 pending in the Court of Judicial Magistrate First Class, Mirzapur (Ahmedabad Rural) is hereby quashed. Rule is made absolute accordingly.

8. Cri. Misc. Appln.No.1055 of 1998 also disposed of.

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